

As the rejection is understood, Wengel et al. is cited for its report of kits which allegedly comprise reagents used in the methods shown.

Becker is cited for its report of kits, the subject matter of which, allegedly overlaps with the claimed invention. The Office Action expressly acknowledges that Backman does not teach incorporation of LNA into the oligonucleotide primers. However, the position is taken that it would have been obvious to one of skill in the art to modify the teachings of Backman, to combine the use of LNA primers taught by Singh.

The rejection is traversed. The cited documents, even if combined, do not teach or suggest Applicants' claimed invention in a manner sufficient to sustain a rejection under either 35 U.S.C. §102 or 103.

Each of the cited documents merely provides general disclosure which cannot support the instant §102 or 103 rejection. None of the cited documents teach or suggest the kits of the present invention for detecting in a sample, the presence of a nucleic acid Q' whose nucleotide sequence differs from a nucleic acid Q in at least one position A, comprising: a) an appropriate amount of nucleoside triphosphates, b) an agent for polymerisation of the nucleoside triphosphates, c) at least one diagnostic oligonucleotide containing at position A a nucleotide which is capable of hybridizing to the nucleotide at position A of nucleic acid Q' but not to a nucleotide at position A of nucleic acid Q under hybridisation conditions, the at least one diagnostic oligonucleotide containing at least one LNA (see, e.g., independent claim 49 of the present application).

Accordingly, each of these rejections is properly withdrawn.

For example, see *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978) ("[r]ejections under 35 U.S.C. §102 are proper only when the claimed subject matter is identically disclosed or described in the prior art.") Additionally, it is well-known that to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a

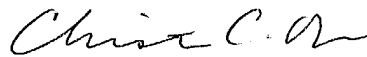
reasonable expectation of success; and (3) the prior art reference(s) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143.

There is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the cited references to make the claimed invention, nor is there a reasonable expectation of success.

In view thereof, reconsideration and withdrawal of the §102 and §103 rejections are requested.

It is believed the application is in condition for immediate allowance, which action is earnestly solicited.

Respectfully submitted,



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